

§ 240.1

AUTHORITY: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

SOURCE: 56 FR 28254, June 19, 1991, unless otherwise noted.

Subpart A—General

§ 240.1 Purpose and scope.

(a) The purpose of this part is to ensure that only qualified persons operate a locomotive or train.

(b) This part prescribes minimum Federal safety standards for the eligibility, training, testing, certification and monitoring of all locomotive engineers to whom it applies. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

(c) The qualifications for locomotive engineers prescribed in this part are pertinent to any person who operates a locomotive, unless that person is specifically excluded by a provision of this part, regardless of the fact that a person may have a job classification title other than that of locomotive engineer.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60988, Nov. 8, 1999]

§ 240.3 Application and responsibility for compliance.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads.

(b) This part does not apply to—

(1) A railroad that operates only on track inside an installation that is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(c) Although the duties imposed by this part are generally stated in terms of the duty of a railroad, each person, including a contractor for a railroad, who performs any function covered by this part must perform that function in accordance with this part.

[64 FR 60988, Nov. 8, 1999]

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§ 240.5 Preemptive effect and construction.

(a) Under 49 U.S.C. 20106, issuance of the regulations in this part preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not impose an unreasonable burden on interstate commerce.

(b) FRA does not intend by issuance of these regulations to preempt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury, or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

(c) FRA does not intend, by use of the term *locomotive engineer* in this part, to preempt or otherwise alter the terms, conditions, or interpretation of existing collective bargaining agreements that employ other job classification titles when identifying persons authorized by a railroad to operate a locomotive.

(d) FRA does not intend by issuance of these regulations to preempt or otherwise alter the authority of a railroad to initiate disciplinary sanctions against its employees, including managers and supervisors, in the normal and customary manner, including those contained in its collective bargaining agreements.

(e) Nothing in this part shall be construed to create or prohibit an eligibility or entitlement to employment in other service for the railroad as a result of denial, suspension, or revocation of certification under this part.

(f) Nothing in this part shall be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to removal from service or other

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adverse action taken as a consequence of this part.

[56 FR 28254, June 19, 1991, as amended at 58 FR 19002, Apr. 9, 1993; 64 FR 60988, Nov. 8, 1999]

§ 240.7 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Alcohol means ethyl alcohol (ethanol) and includes use or possession of any beverage, mixture, or preparation containing ethyl alcohol.

Controlled Substance has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR parts 1301–1316).

Current Employee is any employee with at least one year of experience in transportation service on a railroad.

Designated Supervisor of Locomotive Engineers is a person designated as such by a railroad in accordance with the provisions of § 240.105 of this part.

Drug means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

Dual purpose vehicle means a piece of on-track equipment that is capable of moving railroad rolling stock and may also function as roadway maintenance equipment.

EAP Counselor means a person qualified by experience, education, or training to counsel people affected by substance abuse problems and to evaluate their progress in recovering from or controlling such problems. An EAP Counselor can be a qualified full-time salaried employee of a railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified physician designated by the railroad to perform functions in connection with alcohol or substance abuse evaluation or counseling. As used in this rule, the EAP Counselor owes a duty to the railroad to make an honest and fully informed evaluation of the condition and progress of an employee.

File, filed and filing mean submission of a document under this part on the date when the Docket Clerk receives it, or if sent by mail on or after September 4, 2001, the date mailing was completed.

FRA means the Federal Railroad Administration.

FRA Representative means the Associate Administrator for Safety, FRA, and the Associate Administrator's delegate, including any safety inspector employed by the Federal Railroad Administration and any qualified state railroad safety inspector acting under part 212 of this chapter.

Instructor Engineer means a person who

(1) Is a qualified locomotive engineer under this part,

(2) Has been selected by the railroad to teach others proper train handling procedures, and

(3) Has demonstrated an adequate knowledge of the subjects under instruction.

Joint Operations means rail operations conducted by more than one railroad on the same track regardless of whether such operations are the result of—

(1) Contractual arrangement between the railroads,

(2) Order of a governmental agency or a court of law, or

(3) Any other legally binding directive.

Knowingly means having actual knowledge of the facts giving rise to the violation or that a reasonable person acting in the circumstances, exercising due care, would have had such knowledge.

Locomotive means a piece of on-track equipment (other than specialized roadway maintenance equipment or a dual purpose vehicle operating in accordance with § 240.104(a)(2)):

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(3) Without propelling motors but with one or more control stands.

Locomotive engineer means any person who moves a locomotive or group of locomotives regardless of whether they